

The Final Rejection is Premature

To expedite prosecution of the present application, Applicants attempted to address this issue via a telephone conference with the Examiner, but the Examiner refused to consider the propriety of the final rejection unless a paper was filed by the Applicants. Applicants object to the unnecessary time and expense associated with the Examiner's refusal to even discuss this issue in a telephone conference.

The finality of this rejection is premature because new claims 14-17 were presented in the Amendment that accompanied the filing of the RCE. These new claims are not drawn to the same invention as the previously pending claims. Thus, the final rejection is improper. MPEP § 706.07(b). Furthermore, these claims call for structure which is not found in either of Blakesley or Oestreicher et al. For example, claim 14, calls for the mounting structure to include a seat rail that is pivotally connected to the vehicle body. This requirement has not even been addressed in the final rejection. The Examiner has provided no indication of where either of Blakesley or Oestreicher et al. disclose this pivotal connection has been established. The Examiner is reminded that it is incumbent upon the Examiner to identify where in the reference each element may be found. Ex parte Levy, 17 U.S.P.Q.2d 1461 (BPAI 1990), and that when the Examiner fails to identify a claimed element, the Examiner has failed to establish a prima facie case of anticipation and the rejection cannot be made final.

Furthermore, the pending claims were amended in a manner which removed the term fulcrum therefrom. Applicants submit that these amendments, if presented in an After Final response, would be immediately seen as raising new issues that would require further search and consideration. Thus, the final rejection is improper.

Reconsideration and withdrawal of the finality of the rejection is respectfully requested.

Incorporation of Subject Matter

The specification has been amended to include summaries of the subject matter which is disclosed in each of the two documents which are cited on pages 1, 5 and 10. As will be noted, these amendments also include reference to two United States Patents which are based on the cited Japanese publications. Copies of Publication No. H11-304579, corresponding United States Patent No. 6,069,325, H11-351952 and United States Patent No. 6,323,443, are provided for the Examiner's convenience and enclosed in Appendix C.

It is again pointed out that this is not "essential" subject matter, as defined in MPEP 608.01(p). The Examiner has tacitly admitted this fact by failing to reject any of the claims under 35 U.S.C. §112, first paragraph.

The above mentioned amendments are presented in the form of a substitute specification. No new matter is introduced by any of the changes. Entry of the substitute specification under the guidelines of MPEP § 714.20 is respectfully requested. It is submitted that entry of the substitute specification reduces the clerical burden on the Patent Office and reduces the possibility of printing errors.

In order to facilitate the Examiner's appreciation of the changes which have been made, a redline specification, wherein the deleted material is shown in lined-out format and the added words are shown in underlined format, is submitted with this response in accordance with MPEP 608.01(q).

Specification Objection

The objection to the specification in paragraph #2 of this Office Action is traversed. The claims do not recite "positioning sensor". The recited term "position sensor" , appears on page 2 of the originally filed application. Reconsideration and withdrawal of the objection is respectfully requested.

Disclosure Objection

The objection in paragraph #3 of the Office Action that the use of the term "fulcrum" is incorrect, is traversed. "Fulcrum" is the generic term for a device or arrangement which supports a body so as to pivot thereabout. The Examiner's attention is directed to Appendices A and B of this paper. These make it abundantly clear that a fulcrum is a generic term for a device about which levers pivot. Fig. 5 of the instant application shows a shaft 61 about which the longitudinal plates 53B pivot. This can be compared to the wheel barrow (example of a second class lever) shown in Appendix A, for example. The embodiment shown in Fig. 4 can be compared to a pair of tweezers wherein the flexible (bendable) connection defines a fulcrum (see Appendices A and B).

Rejection under 35 USC § 112

The cancellation of claims 2 and 4 renders this rejection moot.

Rejections under 35 USC § 102

- 1) The rejection of claims 1, 3 and 5-17 under 35 USC § 102(e) as being anticipated by Blakesley is traversed.

In the sentence spanning pages 4 and 5 of the Office Action, it is acknowledged by the Examiner that Blakesley "discloses the entire weight of the seat occupant is transferred as a force through the four sensors." In other words, each sensor transfers a part of the applied load.

The claims, however, call for the load applied to the seat so that a part of the load applied to the seat is not measured by any load sensor. In other words, some of the load is not measured by a sensor. In the system disclosed by Blakesley it is not possible that any one of the four sensors does not measure at least some part of the load which is applied thereto by a seated passenger.

This feature is therefore not anticipated as noted by the Examiner's own admission. Withdrawal of the rejection is accordingly requested.

Blakesley discloses that all four of the disclosed sensors detect a part of the load applied by the seated passenger. The total of the sensor outputs is used to determine the total load applied by the passenger and the difference (if any) of the sensor outputs is used to determine the point where the total load can be assumed to be applied. For anticipation, disclosure must exist that shows that at least one of the four sensors will not measure any load. This is, however, not possible with Blakesley.

Another untenable facet of this rejection is that it appears that one of the four disclosed sensors is being taken as being the claimed sensor and the other three sensors are being taken as being the claimed mounting structure. The rejection further appears to hinge on the irrational conclusion that since the three sensors that are being considered as being the mounting structure they can be ignored as being sensors per se and as such meet the requirement that load is not measured thereby. However, if this is in fact the manner in which the claims have been read on the disclosure of Blakesley, then the mounting structure consists of three sensors which do in fact measure load. The reference cannot be interpreted to arbitrarily ignore sensors for the sake of making an untenable rejection.

Reconsideration and withdrawal of the rejection is respectfully requested.

As noted above, newly presented claim 14 calls for a seat rail that is pivotaly connected to the vehicle body. This requirement has not been addressed in this rejection. It is newly presented, and sets forth subject matter which is not addressed in the rejection. As mentioned above, for at least these reasons alone this claim, at the very least cannot be properly finally rejected.

2) The rejection of claims 1, 3, and 5-17 under 35 USC § 102(e) as being anticipated by Oestreicher et al. is traversed.

The sensor arrangement in Oestreicher et al. is essentially the same as that in Blakesley. As shown in Figs. 8 and 9 for example, the distribution of load on the seat (the occupant) is determined on the basis of Fr and Ff and both the fore and aft sets of sensors. Therefore, all four sensors are used to transfer load and therefore each must measure some of the load.

The Examiner admits that the disclosure of Oestreicher et al. is not fully understood – see page 4, lines 2 and 3 of this Office Action (viz., “As best understood, **Oestreicher et al.** teaches . . .”). Applicants submit that the rejection is improper because the Examiner has not properly understood and applied the disclosure of the reference to the pending claims. Reconsideration and withdrawal of the rejection is respectfully requested.

Further, the apparent reliance on just one of the four load sensors for the sake of rejection is improper as noted above. It is clear that Oestreicher et al. utilizes four sensors and that all four are used to measure the load and its distribution. In this arrangement, it is neither disclosed nor suggested any of the four sensors which are disclosed could be such as to not measure a part of the load which is applied. This renders it impossible for the claimed requirement to be met.

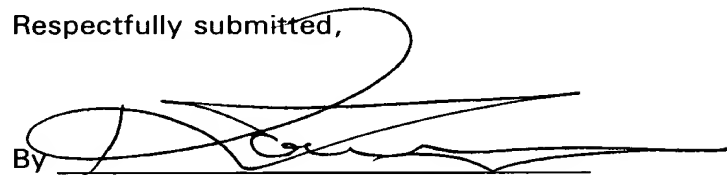
Conclusion

In view of the foregoing amendments and remarks, Applicants believe that the application is now in condition for allowance. An early Notice of Allowance is respectfully requested. If there are any questions regarding the prosecution of this application, the Examiner is invited to contact the undersigned attorney at the phone number listed below.

Respectfully submitted,

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